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BEFORE THE BOARD OF APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Rubin et al.

Serial No. 09/871,388

Filed: May 31, 2001

For: *KUZ, A Novel Family of
Metalloproteases*

Group Art Unit: 1644

Examiner: Nolan, Patrick J.

Attorney Docket No. B97-081-7

CERTIFICATE OF MAILING

I hereby certify that this corr. is being deposited with the US Postal Service as First Class Mail in an envelope addressed to the Comm. for Patents, PO Box 1450, Alexandria, VA 22313-1450 on September 17, 2003.

Signed

Richard Osman

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REPLY BRIEF ON APPEAL

The Honorable Board of Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Honorable Board:

This Reply Brief is responsive to the Examiner's Answer dated August 6, 2003.

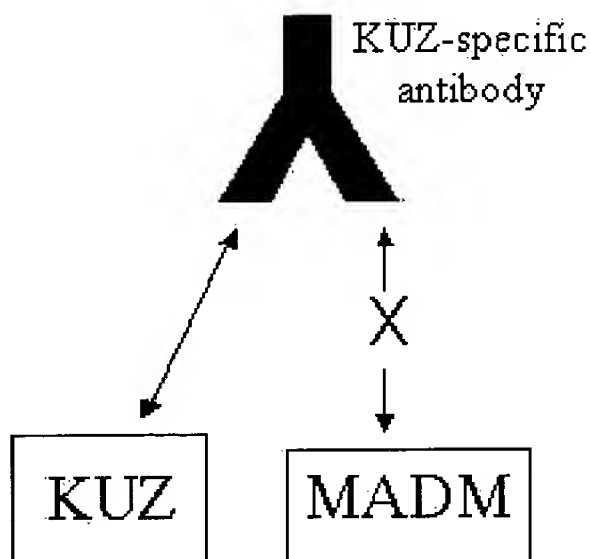
- I. THE EXAMINER'S REJECTION OF CLAIMS 14-21 and 23-33 UNDER 35USC112, FIRST PARAGRAPH (WRITTEN DESCRIPTION) IS UNSUPPORTED.

We believe that the arguments presented in the Answer are irrational and reflect not impartial examination, but continued retaliation by SPE Gary Kunz against the undersigned for complaints made to USPTO management for misconduct by Mr. Kunz. We have made every available procedural effort to have this pattern of abuse addressed, and express our concern here to the extent it informs the record.

The claims are directed to an antibody or antibody fragment which specifically binds a recited KUZ polypeptide and distinguishes and does not specifically bind bovine mammalian disintegrin-metalloproteinase (MADM).

Our Specification teaches that KUZ polypeptides provide KUZ-specific activity, and that an example of KUZ specific activity is KUZ-specific antibody binding (Specification, p.5, lines 14-16 and 20-24). Our Specification teaches that KUZ binding specificity distinguishes that of bovine MADM (Specification p.5, lines 29-31).

Hence, a KUZ polypeptide must bind a KUZ-specific antibody, whereas a MADM polypeptide may not. This requirement is diagramed below:



Note that the KUZ polypeptide, which must have KUZ binding specificity, binds the KUZ-specific antibody, whereas the MADM polypeptide, which does not have KUZ binding specificity, does not. This tells you something about the KUZ-specific antibody: that it must specifically bind the KUZ polypeptide and may not specifically bind the MADM polypeptide, exactly as claimed.

Without Mr. Kunz's influence, we cannot explain the Answer's misreading of our Specification: "the KUZ polypeptides are disclosed for distinguishing between the prior art bovine MADM and the disclosed KUZ polypeptides." Answer, p.3, lines 20-21. This makes no sense: how can KUZ polypeptides be doing the distinguishing between MADM and KUZ polypeptides? It is the binding targets, such as KUZ-specific antibodies, that must do the distinguishing. The KUZ polypeptides are distinguishable from MADM polypeptides because

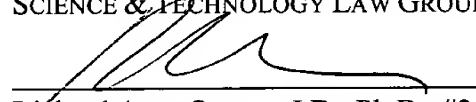
they have different binding specificities. In particular, the KUZ polypeptides specifically bind a KUZ-specific antibody, whereas the MADM polypeptides do not.

The recited KUZ-specific antibody must specifically bind KUZ, and may not specifically bind MADM. If an antibody binds both KUZ and MADM, it is not a KUZ-specific antibody. One of ordinary skill in the art would not misread the Specification as proposed by the Answer.

Appellants respectfully request reversal of the pending Final Action by the Board of Appeals.

We petition for and authorize charging our Deposit Account No.19-0750 all necessary extensions of time. The Commissioner is authorized to charge any fees or credit any overcharges relating to this communication to our Dep. Acct. No.19-0750 (order B97-081-7).

Respectfully submitted,
SCIENCE & TECHNOLOGY LAW GROUP



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